

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of Financial and Insurance Regulation

**In the matter of rescinding
the 1997 Order exempting certain
documents and forms from filing
and approval requirements**

Order No. 10-005-M

**Issued and entered
this 26th day of January 2010
by Ken Ross
Commissioner**

ORDER RESCINDING 1997 EXEMPTION ORDER

On January 29, 1997, Commissioner D. Joseph Olson issued his Order Exempting Certain Documents and Forms from Filing and Approval Requirements, Order No. 97-010-M ("the 1997 Order").

Commissioner Olson made a sweeping exemption of forms with the exception of six documents and forms listed in the 1997 Order. He based his exemption on his finding that the exempted documents and forms were those "to which section 2236 practicably may not be applied or the filing and approval of which are considered unnecessary for the protection of the public."

However, developments in recent years show that the review of personal lines insurance forms is necessary for the protection of the public.

In particular, a Michigan Supreme Court determination made in 2005 dramatically changed the landscape. In *Rory v Continental Ins Co*, 473 Mich 475 (2005), the Court announced that Michigan courts would no longer amend insurance contracts based upon unreasonable clauses. The Court said that it was the responsibility of the Commissioner to review clauses for legality. Thus, policyholders lost their last line of defense in the court system.

The auto insurance policy that gave rise to *Rory* underscores a fundamental regulatory problem. The insurer had inserted a one-year limitation period that worked to eviscerate the uninsured motorist coverage the policyholder had purchased. Except for certain new auto insurers in Michigan, auto policies did not need to be filed from 1997 onward. Thus, there was no way for an agency form reviewer to detect this new limitation clause and reject it.

Similarly, the need for active regulation by the Commissioner has been highlighted by the discovery that more than 100 health insurers were using "discretionary" clauses in their policies.

These clauses typically gave companies final decision powers as to claims, often precluding meaningful court review of those decisions. The agency learned that the use of such clauses had spread to property and casualty policies. Commissioner action to protect consumers from these clauses culminated in the promulgation of rules prohibiting their use.

All of this shows that the protection of the public requires the review of personal lines insurance policies before they are put into use. In this way, the agency can disapprove policies in accordance with MCL 500.2236(5):

Upon written notice to the insurer, the commissioner may disapprove, withdraw approval or prohibit the issuance, advertising, or delivery of any form to any person in this state if it violates any provisions of this act, or contains inconsistent, ambiguous, or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy....

On May 22, 2009, the Commissioner entered an order amending the 1997 Order. This reinstated the submission of auto and home insurance forms. Its implementation through electronic filings has been a success.

The importance of other personal lines insurance policies, such as, but not limited to, life and health insurance policies, warrants the rescission of the 1997 Order in its entirety so that this agency may fully carry out its mission. The Office of Financial and Insurance Regulation needs to have available for review all policies purchased for personal, family, or household purposes.

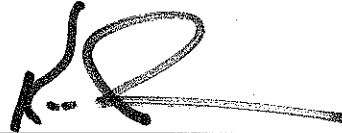
In rescinding the 1997 Order, the following points are made for clarification:

- All requirements for filing policies purchased for personal, family, or household purposes contained in MCL 500.2236 take effect again by operation of law.
- A group policy that is purchased for the personal, family, or household purposes of the covered individuals is required to be filed.
- The exemption contained in MCL 500.2236(8)(e), which applies to policies sold to exempt commercial policyholders, is unaffected.
- The reinstated filing requirements apply only to new policies as of August 1, 2010, and will not apply to policies in use before that date.

The agency recognizes insurers will need lead time to meet these reinstated submission requirements.

Therefore, it is ORDERED that:

1. The 1997 Order is rescinded effective August 1, 2010.
2. Insurers shall submit through SERFF documents and forms required to be filed under MCL 500.2236.

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Ken Ross
Commissioner